

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
CORPUS CHRISTI DIVISION

MARC VEASEY, ET AL.,)	CASE NO: 2:13-CV-00193
)	
Plaintiffs,)	CIVIL
)	
vs.)	Corpus Christi, Texas
)	
RICK PERRY, ET AL.,)	Thursday, August 21, 2014
)	
Defendants.)	(9:30 a.m. to 9:45 a.m.)

MOTION HEARING

BEFORE THE HONORABLE NELVA GONZALES RAMOS,
UNITED STATES DISTRICT JUDGE

Appearances: See Next Page

Court Recorder: Genay Rogan

Clerk: Brandy Cortez

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1 **Corpus Christi, Texas; Thursday, August 21, 2014; 9:30 a.m.**

2 **(Call to Order)**

3 **THE MARSHAL:** All rise.

4 **(Voices off the record)**

5 **THE COURT:** Let me call the case. Then you can do
6 that. The Court calls cause number 2:13-193, Veasey, et al.
7 versus Perry, et al.

8 **COURT RECORDER:** Yes. This is Genay Rogan, and who
9 we have present for United -- I'm sorry -- individuals Veasey,
10 League of United Latin American Citizens is Chad Dunn. For
11 U.S.A. is Bradley Heard. For Mexican American Legislative
12 Caucus is Ezra Rosenberg. For Ortiz, et al., Marinda Van
13 Dalen. For Texas Association of Hispanic County Judges,
14 Rolando Rios. For Texas League of Young Voters Education,
15 Natasha Korgaonkar, Deuel Ross and Kelly Dunbar. For State of
16 Texas Defendants Lindsey Wolf, David Whitley, and Mr. Donnell
17 is present in the courtroom. And that's all that's present.

18 **THE COURT:** All right. Good morning. I think the
19 only matter before the Court this morning is the Defendant's
20 Motion to Compel the documents regarding the election crimes
21 and voter fraud. We've discussed that motion at various Status
22 Hearings. It's my understanding the parties have continued to
23 confer. We've narrowed the issues. I've reviewed everything
24 that's now before the Court, the updates filed in the last
25 couple of dates -- days. Is there anything further from the

1 Defendant on that issue?

2 **MS. WOLF:** Yes. Your Honor, this is Lindsey Wolf. I
3 think our advisory speaks to where we are and (indiscernible)
4 your Honor has an understanding of the information that we're
5 seeking. I think we can just rely on what we filed.

6 **THE COURT:** Okay. What about from the government?

7 **MR. HEARD:** Good morning, your Honor. We just wanted
8 to clarify a few things. As your Honor is aware, we have
9 agreed to provide and Texas has agreed to accept, information
10 from the Criminal Division Act database both nationwide from
11 2004 to present. They've also agreed to accept and we've
12 agreed to provide information from the Executive Officer, U.S.
13 Attorneys and (indiscernible) database, both for cases that
14 were charged between 2004 to the present, as well as
15 information regarding investigations that were opened or closed
16 between those time frames as well. We've taken great pains to
17 provide this information, and nationwide information, and in a
18 manner that reasonably protects the government law enforcement
19 privileges and prosecutorial discretion of the delivery process.
20 But now, the essential dispute has come down to the fact that
21 the State of Texas wants this Court to Order the United States
22 a two days' time to literally rummage through every United
23 States Attorney's Office in the nation and search for a catalog
24 and produce information regarding phone calls, random inquiries
25 and complaints of election law violations that prosecutors

1 immediately deserve (indiscernible) to have no merit because,
2 your Honor, they were worthy of an investigation if they were
3 being meritorious. They would already appear in the act
4 (indiscernible) government have agreed to provide. And worse
5 than that, they want the Court to Order the United States to
6 poll the FBI's Sentinel database which contains classified
7 information and is accessible only to people with a security
8 clearance and presumably a hand search of every FBI appeals
9 office in the country to search for information regarding
10 allegations and complaints of alleged law violations. Again,
11 that investigation is not being credible enough to refer to a
12 prosecutive component of the Department of Justice because,
13 again, if they -- if the investigators thought the allegations
14 were credible enough to merit a full field investigation,
15 they'd be required to consult with the Criminal Division,
16 Public Integrity Section or with the United States Attorney's
17 Office prior to commencing the investigation. So as a
18 practical matter, the search that Texas wants the Court to
19 Order the United States to make could not even be accomplished
20 in two days' time or two weeks' time or likely even two months'
21 time. But even if they could, the burden of engaging of such a
22 scavenger hunt would be -- would far outweigh any probative
23 value of the discovery it would yield. The defense is seeking
24 information, your Honor, relating to the least probative, least
25 credible and most unreliable allegations of alleged crime.

1 This is the stuff that federal prosecutors and federal
2 investigators have essentially rejected out of hand for lack of
3 credibility. So even if the United States believes this type
4 of discovery were relevant to any issue in this case, which it
5 doesn't, the relevance is not the only issue the Court has to
6 consider. The Court has a duty to protect litigants from
7 unduly burdensome, harassing, cumulative, inefficient forms of
8 (indiscernible) of discovery, which is what they, in fact --
9 this is requesting here. Additionally, while the United States
10 was willing to review the information Texas chose to provide
11 the Plaintiffs in this case, we cannot see our own evaluation
12 of government privileges to our adversary in litigation. The
13 Defendant -- we -- the United States has an independent
14 obligation to protect its own privileges no matter what Texas
15 chooses to provide to the parties. And it's important to note,
16 as we've noted before, that the United States has not requested
17 any information from Texas and neither in the course of it
18 being confers, we've indicated to Texas that to the extent that
19 the United States is not willing to produce certain
20 information, for instance, geographical information, that it
21 would not object to the State of Texas calling back -- you
22 know, calling back that information that is produced in
23 response to other Plaintiffs' discovery requests.

24 **THE COURT:** Okay.

25 **MR. HEARD:** Uh --

1 **THE COURT:** Anything further, Ms. Lindsey?

2 **MS. WOLF:** Yes, your Honor.

3 **THE COURT:** Ms. Wolf -- I'm sorry.

4 **MS. WOLF:** It's okay. Your Honor, I'd just like to
5 respond to that. I mean, I think there's a difference here.
6 As your Honor instructs from the beginning of this process,
7 what we've been trying to work with the DOJ, that it is a proxy
8 issue. The Defendants have provided this particular type of
9 information regarding referrals which neither have been
10 investigated nor prosecuted on a very, very general level
11 (indiscernible) referral and the geographic location where the
12 (indiscernible) referral has taken place. And Mr. Heard
13 instructs two days' time but, your Honor, we served these
14 discovery requests -- I think the first one was served back in
15 March. So, you know, what -- how the United States chose to
16 object without a basis for the particular document requests.
17 We don't think it's now our -- you know, that we should have to
18 suffer because they improperly objected to those document
19 requests. With respect to Mr. Heard's point regarding the fact
20 that this information was requested by other Plaintiffs, that
21 maybe the case in this particular litigation, but
22 (indiscernible) referenced some testimony by DOJ Agent Mitchell
23 in the Section 5 case. And it's my understanding that in the
24 Section 5 case, the United States (indiscernible) requested the
25 particular (indiscernible) --

1 **THE COURT:** Hold on, Ms. Wolf. Hold on. Hold on.

2 **COURT RECORDER:** I'm sorry. Could you slow down just
3 a little bit, please?

4 **MS. WOLF:** Sure.

5 **COURT RECORDER:** And you're not coming in clear on
6 some of the words.

7 **MS. WOLF:** Sure. It's my understanding in the
8 Section 5 case, that the United States had requested a
9 particular type of information and counsel for the United
10 States in the Section 5 case questioned Major Mitchell
11 extensively as to this particular type of information. So, I
12 don't think this is information that the United States
13 (indiscernible) requested in the past. I would also instruct
14 the Defendants have tried to be reasonable. We've tried to
15 work with the United States. We offered to limit the FBI
16 information and the information from the U.S. Attorney's Office
17 to the State of Texas, thereby elimination information from 49
18 other states, which we thought was highly generous. And the
19 United States came back and said, "No, even with that narrow
20 search parameter, we can't do that either." We offered
21 (indiscernible), "That's okay. You don't have (indiscernible)
22 geographical location, even though we gave that to you," which,
23 again, was (indiscernible) issues. And I think to respond to
24 Mr. Heard's point regarding relevance, it -- the Court --
25 (indiscernible) Texas is if the members of the public think

1 that election crimes and voter fraud is a crime and they're
2 referring that to relevant authorities. That, in turn, is
3 relevant to the legislature's actions in responding to the
4 concerns of its constituents to enact --

5 **THE COURT:** And I agree with that, and I think we are
6 where we are at this point because of that and a lot of that
7 information has already been produced. I mean, I -- you know,
8 we've tried to whittle this down now. I've continued
9 conferring because I think everyone understood the Court did
10 believe that that was relevant to an extent. So, anything
11 further?

12 **MR. HEARD:** Well, your Honor, in terms of -- the fact
13 of (indiscernible) relevance that allegation --

14 **COURT RECORDER:** I'm sorry. Can you identify
15 yourself?

16 **THE COURT:** Can you -- you'll need to identify
17 yourself before you speak.

18 **MR. HEARD:** I'm sorry, your Honor. Brad Heard for
19 the United States.

20 **THE COURT:** Just for the record. I don't think I
21 need to hear any more. The Court is going to grant the Motion
22 to Compel only as to what has already been produced by the
23 government regarding this issue and as to what the government
24 has further agreed to produce. My understanding, the
25 government has agreed to some further production; is that

1 right? Maybe today or --

2 **MR. HEARD:** Yes, your Honor.

3 **THE COURT:** Okay.

4 **MR. HEARD:** We will have documents to produce to the
5 Defendant today.

6 **THE COURT:** And the Court's going to --

7 **MR. HEARD:** Brad Heard for the United States --
8 sorry.

9 **THE COURT:** All right. The Court's going to deny the
10 remainder of that motion. The Court finds that the Defendant's
11 request, I guess as it now stands before the Court after the
12 parties have conferred and agreed to some matters, and the
13 Court has made some rulings on some of those -- the Court finds
14 that request at this point what's still left outstanding,
15 unduly burdensome regarding the search required in relation to
16 or in light of the type or nature of information that's being
17 requested at this time. And to a certain extent, the request
18 is duplicative or cumulative of what's already been produced.
19 Now, does this denial, then, regarding the remainder of the
20 motion moot the government's Motion for a Protective Order
21 which I believe is on this very issue?

22 **MR. HEARD:** I think it does, your Honor.

23 **THE COURT:** Okay. Is there anything else that I need
24 to address this morning? There's various motions pending.
25 We're kind of getting to the end here. I'm just going to

1 assume you-all are still either conferring on that or the Court
2 doesn't need to address those unless you all let the Court
3 know.

4 **MR. ROSENBERG:** Your Honor? Ezra Rosenberg for Texas
5 NAACP and (indiscernible). One issue which isn't contested at
6 all, but actually a question of your Honor because of the
7 filing that (indiscernible) the next couple of days. The
8 parties have agreed to electronic copies of exhibits could be
9 filed but if your Honor wants or is expecting hard copies, it
10 would be good for us to know that because it would be a lot of
11 copying that has to be done right now. And also, we wanted to
12 confirm whether you wanted excerpts of any prior testimony,
13 deposition designations or trial designations or witness
14 designation?

15 **THE COURT:** Okay. Brandy, were you going to address
16 the exhibits?

17 **THE CLERK:** Your Honor, I believe we can -- if you
18 guys want to place the exhibits on a CD and just maybe make
19 three copies for the Court. I think that would be sufficient.

20 **THE COURT:** Okay.

21 **THE CLERK:** Then we can pull up (indiscernible)

22 **MR. ROSENBERG:** So, I'm sorry -- three hard copies
23 with the Court?

24 **THE CLERK:** Three copies of (indiscernible)

25 **MR. ROSENBERG:** Three copies of the disc?

1 **THE CLERK:** Yes, sir.

2 **MR. ROSENBERG:** Okay. Great. And for deposition
3 designations, do you need any actual excerpts or the
4 designations, themselves, with transcripts on discs as well?

5 **THE COURT:** Disc is fine on that also.

6 **MR. DONNELL:** Do you need the actual testimony or
7 just the line and page?

8 **THE COURT:** I'm okay with just line and page. You
9 know, I'm going -- I'm assuming you-all are going to present
10 that to the Court; is that right? As --

11 **MR. ROSENBERG:** That's right, your Honor.

12 **THE COURT:** I don't need the whole -- I only need
13 what's going to be coming into evidence. Is that what the
14 question was, whether I need the whole transcript or just page
15 and line?

16 **MR. ROSENBERG:** Just the page and line that we're
17 offering to designate.

18 **THE COURT:** Right. Because I'm assuming if there's
19 an issue with that, the other side is going to have their own
20 page and line, correct? To clarify?

21 **MR. ROSENBERG:** Right. We have a schedule for
22 designations and (indiscernible) designations.

23 **THE COURT:** Right. So, I don't need to see the whole
24 transcript. I only need -- you know, you-all are going to
25 present what I need to see and hear I'm assuming, correct?

1 **MR. ROSENBERG:** That's right, your Honor.

2 **THE COURT:** Okay. Yeah, I'm all right with that.

3 **MR. ROSENBERG:** Thank you very much.

4 **THE COURT:** Can I ask, is everyone planning to be
5 here; is it Wednesday or Thursday, Brandy? Final Pretrial?

6 **THE CLERK:** It's Wednesday, your Honor.

7 **THE COURT:** Is everyone planning to be here in
8 person?

9 **MR. SCOTT:** John Scott for the State of Texas. We'll
10 be there.

11 **THE COURT:** Okay. Are all the Plaintiffs?

12 **MR. SPEAKER:** Yes, we intend to attend in person.

13 **THE COURT:** Okay. And let me just ask, was anyone
14 not planning to be here?

15 (**No response.**)

16 **THE COURT:** Okay. It just gets kind of difficult to
17 do some matters by phone so I -- that was what I had envisioned
18 and thought, but I thought I should ask since we've been doing
19 so much of this by phone. Anything else to address this
20 morning?

21 **MR. SCOTT:** Your Honor, John Scott. One more thing
22 and it relates to a number of -- as a result of the scheduling.
23 We're still conducting discovery. We will be doing depositions
24 after our Pretrial Hearing. With regard to evidence, we need
25 to file a motion on that. How would you like us to handle that

1 because we've got, I think, all of our exhibits are due this
2 Friday to each other. Not really (indiscernible). The Order
3 doesn't really consider the fact that discovery is going to be
4 going on and maybe up to the date before trial.

5 **THE COURT:** I mean, I'm assuming that that's all
6 agreed to by the parties, correct? And we'll just --

7 **MR. SCOTT:** Yeah, I think that's right.

8 **THE COURT:** -- take it as it is.

9 **MR. ROSENBERG:** I mean, one -- Ezra Rosenberg -- one
10 thing that we did agree to was that (indiscernible) could be
11 supplemented (indiscernible) deposition.

12 **MR. SPEAKER:** Yes.

13 **THE COURT:** Yes. Okay.

14 **MR. SCOTT:** So, probably just want to put that on the
15 radar and didn't know how the Court -- as long as the parties
16 are in agreement on how to handle that, if that's acceptable to
17 the Court?

18 **THE COURT:** Yes. That's fine. Now, when is the
19 dispositive deadline motion?

20 **MR. SCOTT:** It may be tomorrow.

21 **THE COURT:** Was there going to be --

22 **MR. SCOTT:** I don't expect that there will be any
23 filing from the State of Texas Defendants, your Honor.

24 **THE COURT:** Okay. And I just -- I know -- because at
25 one time we had talked about with it being that late in the

1 game, I had said, I believe in this case, that if anything was
2 filed, it would just be carried through the trial and we would
3 address it like that. But it doesn't sound like that's going
4 to be an issue. Anything else, counsel?

5 **MR. SCOTT:** No, your Honor. Thank you.

6 **THE COURT:** All right.

7 **MR. SPEAKER:** Thank you, your Honor.

8 **MS. SPEAKER:** Thank you, your Honor.

9 **THE COURT:** Thank you. You're excused.

10 **MR. SPEAKER:** Thank you, your Honor.

11 (This proceeding was adjourned at 9:45 a.m.)

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CERTIFICATION

I certify that the foregoing is a correct transcript from the electronic sound recording of the proceedings in the above-entitled matter.

A handwritten signature in black ink that reads "Toni I. Hudson". The signature is fluid and cursive, with "Toni" and "I." on the first line and "Hudson" on the second line.

August 22, 2014

TONI HUDSON, TRANSCRIBER